

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Steak N Shake, Inc.,
Petitioner-Appellant,

v.

Black Hawk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-07-0800
Parcel No. 8813-02-376-014

On February 24, 2010, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Steak N Shake, Inc., requested its appeal be considered without hearing. It is represented by tax representative Duff & Phelps, LLC, Plano, Texas. The Board of Review designated Assistant Black Hawk County Attorney David J. Mason as its legal representative. Neither party submitted documentary evidence in addition to that in the certified record. The Appeal Board now having examined the entire record and being fully advised, finds:

Findings of Fact

Steak N Shake, Inc., owner of property located at 1410 Flammang Drive, Waterloo, Iowa, appeals from the Black Hawk County Board of Review decision reassessing its property. According to the property record card, the subject property consists of a one-story franchise restaurant having a 3534 square-foot base. The improvements include 11,200 square feet of asphalt paving, 2500 square feet of concrete paving, signposts, an illuminated canopy, and a concrete-block waste enclosure. The building is in normal condition, has a quality grade of 4+00, and is situated on a 0.594 acre site. The card indicates the improvements were built in 1998, have a 12% physical depreciation, and have 20% other

obsolescence. The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$749,740, representing \$148,110 in land value and \$601,630 in improvement value.

Steak N Shake protested to the Board of Review on the grounds: (1) that the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), and (2) that there had been a downward change in value under sections 441.37(1) and 441.35(3). It claimed \$680,000 was the actual value and a fair assessment of the property. The Board of Review granted the protest, in part, and reduced the total assessment to \$687,710, allocated \$148,110 to land value and \$539,600 to improvement value.

Steak N Shake then appealed to this Board and claimed there was a downward change in value. However, we note, that Steak N Shake's claim of downward change in value in an assessment year is akin to a challenge on market value and a ground it has already pled before the Board of Review. See *Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Steak N Shake also noted it believes the correct assessment is \$548,110, allocated \$148,110 to land and \$400,000 to the improvements.

Steak N Shake reports the restaurant has closed, the building is vacant, and the property generates no revenue. The record does not indicate how long the building had been vacant and whether it was vacant on January 1, 2010. The property record card shows the Board of Review increased the property's other obsolescence from 10% to 20% for 2009. In a letter included in its appeal to PAAB, Steak N Shake asserts it did not know the building was vacant at the time of the board of review hearing and believes the vacancy warranted additional economic obsolescence.

The certified record included an exhibit listing five state-wide sales of franchise restaurants occurring from 2006 to 2008. The unadjusted sales price per square foot of these properties ranged from \$78.25 to \$198.23 with a median of \$122.27 per square foot. The subject property is assessed at

\$194.60 per square foot. The property having the highest price per square foot is a restaurant built in 2007 and is also located in Black Hawk County.

Two of the five properties in the exhibit are the same. That property, located at 2215 E. Kimberly Road, Davenport, sold in March 2006 and again in September 2008. While the September sale resulted in the lowest price per square foot, the exhibit indicates that sale was a Section 1031 exchange and, if not adjusted, is considered an abnormal sale by the Department of Revenue. Iowa Department of Revenue, Property Tax Division, Abnormal Sales Conditions, Oct. 12, 2007, <http://www.iowa.gov/tax/locgov/propsalesconditionsguide101207.pdf>. Disregarding that sale would slightly increase the median price per square foot.

Considering the remaining 2008 comparable sales, the most similarly-sized property sold for \$142.43 per square foot and was almost 25 years older, and the most similarly-aged property sold for \$98.38 but was double the square feet. While the unadjusted sales data may suggest the subject property is at the high end of the range, it is unreliable and does not show how \$548,110 is the correct value. The data included sales from across the state. Specifically, one in Council Bluffs, one in Des Moines, one in Davenport (which sold twice), and one in Cedar Falls. Adjustments for age, size, and location might be reflected in the sale price when the properties are located in similar markets. But when the sales are located across the state, and across different markets, a seemingly unadjusted sales price may not accurately reflect market value. Having little analysis or supplemental information about the sales or about Steak N Shake's exhibit, this Board cannot determine if adjustments should have been made and cannot determine whether the property is over-assessed based solely on the sales approach.

We, therefore, look to other information in the record to determine if the subject property is over assessed.

Steak N Shake did not develop the cost approach to value. According to the property record card, the cost approach to value put the subject property at \$643,100. The card values the improvements at \$494,990 and land at \$148,110. But the Board of Review meeting minutes show the 2008 and initial 2009 assessment was \$749,740, allocated \$148,100 to land and \$601,630 to improvements. We are unable to determine the reason for the discrepancy and do not find the cost approach to be a reliable indicator of market value.

The certified record also included an income analysis from Steak N Shake indicating that if fully occupied with a rental income of \$20 per square foot and using a 9% capitalization rate, the property would be valued at \$676,800. A 10% vacancy factor is listed. The real estate expenses include management expenses and replacement reserves. The remaining operating expenses would be passed on to the tenant under a triple-net lease that is common for this type of property. Using this Board's experience and knowledge, we find these inputs are reasonable. Furthermore, there was no evidence offered to refute the income and expense information. While Steak N Shake requested additional reduction for vacancy, it did not provide any information on the start or duration of the vacancy.

Accordingly, we find support for the assertion that Steak N Shake is over-assessed as of January 1, 2009. Recognizing the limitations in the preferred sales approach and the cost approach, we give the most weight to the income approach. We find the best evidence supports a value of \$676,800 for the subject property.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal

Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Section 441.21 requires the sales approach be used whenever sales can readily determine market value. *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). In *Farmers Grain Dealers Ass'n v. Sather*, 267 N.W.2d 58 (Iowa 1978), the property owners used two experts that based its valuations on the sales of other comparable properties in the Mid-West, but outside the taxing district since no comparable sales were available in the county. It is permissible to

use comparable sales outside the taxing district when no comparable sales were available in the district. *Id.* at 61. In this case, although the sales submitted by Steak N Shake are outside the assessing jurisdiction, they could still be reliable indicators of value for the subject property. However, as previously noted, because limited data was presented regarding the sales, this Board cannot determine their comparability and whether any adjustments should have been made to the sales to determine the market value of Steak N Shake's property.

"The issue of comparability has two facets: the property offered for comparison must be "comparable" and the sale of that property must be a "normal transaction." *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009). We recognize that a property need not be an exact to be considered comparable. *Id.* (citing *Bartlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 93 (Iowa 1997) (quoting *Redfield v. Iowa State Highway Comm'n*, 251 Iowa 332, 341, 99 N.W.2d 413, 418 (1959))). But given the wide range of property sizes, ages, and especially locations it appears the sales offered by Steak N Shake need adjustments for this Board to determine their comparability. Specifically,

This Board is "free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value." *Heritage Cablevision*, 457 N.W.2d at 598. We, therefore, decline to rely on this approach as the sole indicator of market value and turn to "other factors." See Iowa Code § 441.21(2). We do this, as examining both the cost approach and the income approach, this Board finds the more reliable indicator of value to be the value determined by the income method.

We, therefore, modify the Steak N Shake property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$676,800, representing \$48,110 in land value and \$528,690 in improvement value.

IT IS THEREFORE ORDERED that the January 1, 2009, assessment as determined by the Black Hawk County Board of Review is modified to \$676,800, representing \$48,110 in land value and \$528,690 in improvement value, as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment appeal Board shall mail a copy of this Order to the Black Hawk County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 7 day of May 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Karen Oberman
Karen Oberman, Board Chair

Richard Stradley
Richard Stradley, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-7</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>